

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 438

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Chesbro and Fuentes)
(Coauthor: Senator DeSaulnier)

February 24, 2009

An act to ~~add Section 7578.5 to the Government Code, to amend~~ Section 1001.21 of the Penal Code, ~~and to amend Section 4418.7 of,~~ and to add and repeal Section 4418.8 of, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as amended, Beall. Persons with developmental disabilities: criminal proceedings: diversion.

Existing law, the Lanterman Developmental Disabilities Services Act, grants persons with developmental disabilities the right to receive treatment and services to meet their needs, regardless of age or degree of disability, at each stage of life. Existing law requires that the state pay for these services through contracts with various private nonprofit corporations for the operation of regional centers for the developmentally disabled, and requires regional centers to develop an individual program plan for each consumer that sets forth the treatment and services to be provided for the consumer.

Existing law establishes a process *for* diversion of defendants *with* cognitive developmental disabilities in criminal proceedings for an offense which is charged as, or reduced to, a misdemeanor, but excludes persons who have been previously diverted.

This bill would make these procedures *also* applicable for an offense that is charged or reduced to a nonviolent felony, as defined, *or a serious felony, as defined*, and would delete the exclusion for those previously diverted.

~~This bill would require the State Department of Developmental Services and the Department of Corrections and Rehabilitation to establish and enter into an interagency agreement for the sharing of information and data, to include a protocol and procedures by which regularly updated information and data on adults and juveniles with developmental disabilities served by the Department of Corrections and Rehabilitation to be shared with the State Department of Developmental Services.~~

~~Existing law requires a regional center to immediately notify the appropriate regional resource development project, the consumer, and the consumer's parents, legal guardian, or conservator, if the regional center determines, or is informed, that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood.~~

~~This bill would apply these notice requirements to a situation in which a consumer, who is a current state developmental center resident, whose placement based on incompetence to stand trial is due to end, and who is at risk of being placed in, or is at risk of continued placement in, a state developmental center.~~

This bill would also require the department, by July 1, 2010, to convene a task force to identify strategies and best practices for local interagency coordination and cooperation in addressing the needs of adults and juveniles with developmental disabilities in the criminal and juvenile justice systems. The bill would require the task force to issue its interim reports to the Legislature on the progress of its work by July 1, 2011, and July 1, 2012, and to issue its final report to the Legislature by July 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 7578.5 is added to the Government Code,~~
- 2 ~~to read:~~
- 3 ~~7578.5. (a) To ensure timely planning for the provision of~~
- 4 ~~developmental disabilities services by the State Department of~~

~~Developmental Services and regional centers to persons with developmental disabilities served by the Department of Corrections and Rehabilitation upon their release from a facility or program operated by the Department of Corrections and Rehabilitation, by July 1, 2010, the State Department of Developmental Services and the Department of Corrections and Rehabilitation shall establish and enter into an interagency agreement for the sharing of information and data.~~

~~(b) The interagency agreement shall include a protocol and procedures by which regularly updated information and data on adults and juveniles with developmental disabilities served by the Department of Corrections and Rehabilitation will be shared with the State Department of Developmental Services. This aggregate information shall include, but need not be limited to both of the following:~~

~~(1) The number of individuals with identified developmental disabilities or who are believed to have developmental disabilities residing in each Department of Corrections and Rehabilitation operated facility.~~

~~(2) The number of these individuals who are known to be clients of a regional center and, for these individuals, the number and age breakdown by regional center.~~

~~(c) The interagency agreement shall include a protocol for notice by the Department of Corrections and Rehabilitation to the regional center of the anticipated date of the release of a person identified with developmental disabilities.~~

~~(d) Nothing in this section shall be construed to alter requirements for the disclosure of confidential information and records under existing law, including Section 4514 of the Welfare and Institutions Code.~~

~~SEC. 2.~~

~~SECTION 1.~~ Section 1001.21 of the Penal Code is amended to read:

1001.21. (a) This chapter shall apply whenever a case is before any a court upon an accusatory pleading at any stage of the criminal proceedings, for any person who has been evaluated by a regional center for the developmentally disabled and who is determined to be a person with a cognitive developmental disability by the regional center, and who therefore is eligible for its services.

(b) This chapter applies to any offense ~~which~~ *that* is charged as or reduced to a misdemeanor or nonviolent felony. For the purposes of this section, “nonviolent felony” is any felony that is not a “violent felony” as that term is defined in subdivision (c) ~~Section 667.5 of Section 667.5 or a “serious felony,” as that term is defined in subdivision (c) of Section 1192.7 or Section 1192.8.~~

~~SEC. 3. Section 4418.7 of the Welfare and Institutions Code is amended to read:~~

~~4418.7. (a) If the regional center determines, or is informed by the consumer’s parents, legal guardian, conservator, or authorized representative that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, and the consumer’s parents, legal guardian, or conservator.~~

~~(b) In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, including, visiting the consumer, if appropriate, determining barriers to successful integration, and recommending the most appropriate means necessary to assist the consumer to remain in the community. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis. An individual program plan meeting, including the regional resource development project’s representative, shall be convened as soon as possible to review the emergency services and supports and determine the consumer’s ongoing needs for services and supports. The regional resource development project shall follow up with the regional center as to the success of the recommended interventions until the consumer’s living arrangement is stable.~~

~~(c) If the regional resource development project, in consultation with the regional center, the consumer, and the consumer’s parents, legal guardian, or conservator, when appropriate, determines that admittance to a state developmental center is necessary to prevent a substantial risk to the individual’s health and safety, the regional resource development project shall immediately facilitate that admission.~~

~~(d) The department shall collect data on the outcomes of efforts to assist at-risk consumers to remain in the community. The department shall make aggregate data on the implementation of the requirements of this section available, upon request.~~

~~(e) This section also applies to a situation in which a consumer, who is a current resident of a state developmental center, whose placement pursuant to Section 1370.1 of the Penal Code is due to end, and who is at risk of being placed in, or is at risk of continued placement in, a state developmental center through a petition filed pursuant to Section 6502.~~

~~SEC. 4.~~

~~SEC. 2.~~ Section 4418.8 is added to the Welfare and Institutions Code, to read:

4418.8. (a) By July 1, 2010, the department shall convene a task force to identify strategies and best practices for local interagency coordination and cooperation in addressing the needs of adults and juveniles with developmental disabilities in the criminal and juvenile justice systems. The task force shall include representation from regional centers, ~~the judicial council~~ *Judicial Council*, probation offices, public defenders, district attorneys, school districts, local law enforcement, county mental health, community service providers, regional center clients and their families, and disability and juvenile justice advocacy organizations. The task force, overall, shall include geographically diverse participation from both large and small counties. The task force may form separate subcommittees, focusing on adults and juveniles. The task force shall meet in a manner and as often as the department determines to be appropriate, consistent with the goals of the task force and the availability of funds.

(b) The task force shall address issues including, but not limited to, strategies and best practices related to the accomplishment of all of the following:

(1) Early identification and assessment of people with developmental disabilities in the criminal and juvenile justice process.

(2) Development of protocols and procedures for ongoing communication and cooperation between regional centers and other local agencies, including law enforcement and the courts.

(3) Training of jail and court personnel, including judges, public defenders, district attorneys, and probation officers, on issues

1 related to people with developmental disabilities and available
2 community resources.

3 (c) The task force shall also identify systemic barriers to serving
4 people with developmental disabilities in community-based settings
5 instead of jails and prisons, including licensing barriers and
6 community resource and service needs, and recommendations for
7 addressing identified systemic barriers.

8 *(d) The task force shall identify barriers to, and needed services*
9 *for, serving, in community settings, individuals who have been*
10 *determined to be incompetent to stand trial. This shall include*
11 *exploring approaches used in other states, assessing the need for*
12 *new licensing categories, and recommending, as appropriate,*
13 *alternative and innovative service delivery models, including, but*
14 *not limited to, secure community treatment options, for individuals*
15 *arrested for serious or violent felonies.*

16 ~~(d)~~

17 (e) As appropriate, the task force shall develop model training
18 curricula and model memoranda of understanding between regional
19 centers and the courts and other local agencies.

20 ~~(e)~~

21 (f) The task force shall issue interim reports to the Legislature
22 on the progress of its work by July 1, 2011, and July 1, 2012. The
23 task force shall complete its work and issue a final report to the
24 Legislature by June 30, 2013. The final report shall include a
25 description of best practices and strategies identified by the task
26 force, any sample training curricula, materials, and memoranda of
27 understanding developed by the task force, and recommendations
28 for future action, including legislative recommendations related
29 to adults and youth in the criminal and juvenile justice systems.

30 ~~(f)~~

31 (g) This section shall become inoperative on July 1, 2013, and,
32 as of January 1, 2014, is repealed, unless a later enacted statute,
33 that becomes operative on or before January 1, 2014, deletes or
34 extends the dates on which it becomes inoperative and is repealed.